

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13366 of Don and Penny Moser, pursuant to Sub section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3104.42 to allow an addition to an apartment house which is a non-conforming structure, and variances from the prohibition against allowing an addition to a non-conforming structure which now exceeds the allowable percentage of lot occupancy (Paragraph 7107.21) and the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7107.21) for a proposed two story addition in an R-5-A District at the premises 2220 - 40th Street, N.W., (Square 1317, Lot 18).

HEARING DATE: November 12, 1980

DECISION DATE: January 7, 1981

FINDINGS OF FACT:

1. The subject property is jointly owned by Donald and Penny Moser, Joanne Gates, Elizabeth Hunt and George N. Gilbert. At the time of public hearing the Board allowed amendment of the application to include Don and Penny Moser, et al.

2. The subject property is located on the west side of 40th Street, N.W., between "W" and Benton Streets in an R-5-A zone District at premises known as 2220 - 40th Street, N.W.

3. The site is presently improved with a two story brick four unit apartment building, that has two apartments on each floor.

4. The applicants propose the construction of a rear addition to extend and enclose the existing rear porches of the southern half of the structure. The addition would enlarge two units in the building, which are relatively small.

5. The subject structure which was built prior to the May 12, 1958 adoption of the Zoning Regulations, is presently non-conforming in that it exceeds the lot occupancy requirements of the R-5-A District. The overall lot occupancy after the proposed construction will exceed the permitted forty percent lot occupancy by approximately eleven percent.

6. The property meets and exceeds the R-5-A requirements as to rear yard, side yard and floor area ratio. The proposed addition would require variances only because it slightly increases the degree of non-conformity of the lot occupancy.

7. The entire block on which the subject property is located, is developed on both sides with buildings similar to the subject structure, which have similar porches in the rear. Some of the porches have been enclosed and others have been enlarged and enclosed to provide added living space. The lot sizes are also similar.

8. While the adjoining and nearby structures are used predominantly as rental apartment units, the subject site has been purchased by the tenants in common and is in the process of being converted into home ownership housing.

9. Advisory Neighborhood Commission 3B did not enlarge on reasons, but offered support of the application by letter dated November 25, 1980, and filed with the Board as Exhibit No. 22 of the record.

10. Both adjoining property owners to the north and south, as well as surrounding residents offered support of the application.

11. The Office of Planning and Development by report received October 31, 1980, and testimony given at the time of public hearing, recommended denial of the application on the grounds that the subject property is similar to other structures in the block, that no other building had been allowed to protrude beyond the original rear walls of the structure, and that the applicant failed to show the practical difficulty in using the site in its present state.

12. The Board finds that as to its first point, of no structure exceeding the original rear walls, the OPD erred. Similar additions have been made in the immediate block. The Board further finds that the degree of non-conformity of the existing structure, which was built prior to adoption of the present Zoning Regulations, is increased by the minimal amount of eleven percent with the proposed addition. The Board finds that to prohibit the construction of an addition to this structure to improve the relatively small size of the units in this four unit apartment building, would impose such a practical difficulty upon the owner.

13. The Board notes that subsequent to the OPD report, the applicant submitted a more detailed statement outlining the practical difficulty, with which the Board concerns.

14. There was no opposition to the granting of this application.

CONCLUSION OF LAW AND OPINION

The applicant seeks area variances, the granting of which requires a showing of a practical difficulty stemming from the property. The subject structure was erected prior to the effective date of the current Zoning Regulations and exceeds the lot occupancy requirements of the current Zoning Regulations. The variance sought is minor and the practical difficulty is inherent in the size of the property and the size of the existing building. The Board concludes that, based on the record, the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Douglas J. Patton & Connie Fortune to grant; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 17 FEB 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.